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8 United States of America

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10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,) Criminal Case No. 08cr0415-LAB
13 Plaintiff,) **GOVERNMENT'S MOTION FOR:**
14 v.) **(1) FINGERPRINT EXEMPLARS**
15 ISIDRO DIAZ-SANTACRUZ,) **(2) RECIPROCAL DISCOVERY**
16 Defendant.) **TOGETHER WITH STATEMENT OF FACTS**
17) **AND MEMORANDUM OF POINTS AND**
18) **AUTHORITIES**
19) Date: March 31, 2008
20) Time: 2:00 p.m.
21) Court: The Hon. Larry A. Burns
22)
23 _____)

24 COMES NOW the plaintiff, UNITED STATES OF AMERICA, by and through its counsel,
25 United States Attorney, Karen P. Hewitt, and Assistant U.S. Attorney Rebecca S. Kanter, and hereby
26 files its Motion for Fingerprint Exemplars and Reciprocal Discovery in the above-referenced case. This
27 Motion is based upon the files and records of this case, together with the attached Statement of Facts
28 and Memorandum of Points and Authorities.

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I**STATEMENT OF FACTS****A. Defendant's Apprehension**

On January 14, 2008, at about 1:15 a.m., Border Patrol Agent Christopher Womersley responded to a Remote Video Surveillance System ("RVSS") report of a group of four suspected undocumented aliens jumping over the primary fence in an area known as Echo-3. This area is approximately one mile east of the San Ysidro Port of Entry and 200 yards north of the international boundary fence. When Agent Womersley arrived at the scene, he apprehended one individual later identified as Isidro Diaz-Santacruz. Border Patrol Agent Joseph Spielman apprehended three other individuals. The Defendant admitted to being a citizen and national of Mexico with no documents to legally remain in the United States. Defendant was transported to the Imperial Beach Border Patrol Station for processing.

B. Defendant's Criminal and Immigration History

Defendant's other prior convictions include an April 29, 2005, conviction in the California Superior Court in Fairfield for Possession of a Ephedrine to Manufacture Methamphetamine in violation of California Health & Safety Code Section 11383, for which he received a sentence of one year. On November 16, 2007, Defendant sustained a conviction in the California Superior Court in Newport Beach for Driving Under the Influence in violation of California Vehicular Code Section 23152, for which he received six days in jail and three years probation. Five days later, he sustained another conviction for Driving Under the Influence in violation of California Vehicular Code Section 23152, for which he received sixty days in jail and five years probation.

Defendant appeared before an Immigration Judge for a deportation hearing on January 4, 2008, and was physically removed from the United States to Mexico on January 10, 2008, four days before his apprehension.

C. Defendant's Post-Miranda Confession

On January 14, 2008, at 7:29 a.m., Defendant was read his Miranda rights by Border Patrol Agent Fidel Herrera Diaz. Defendant agreed to waive his rights and speak to agents without an attorney. He admitted to being a citizen and national of Mexico with no documentation to enter or remain in the United States legally. He stated that he was born in Mexico on July 15, 1985.

II

UNITED STATES' MOTIONS**A. FINGERPRINT EXEMPLARS**

The United States requests that the Court order that Defendant make himself available for fingerprinting by the United States' fingerprint expert. See United States v. Ortiz-Hernandez, 427 F.3d 567, 576-77 (9th Cir. 2005) (Government may have defendant fingerprinted and use criminal and immigration records in Section 1326 prosecution). The privilege against self-incrimination only applies to testimonial evidence. See Schmerber v. California, 384 U.S. 757, 761 (1966) (withdrawal of blood is not testimonial). Identifying physical characteristics, including fingerprints, are not testimonial in nature and the collection and use of such evidence does not violate Defendant's Fifth Amendment right against self-incrimination. United States v. DePalma, 414 F.2d 394, 397 (9th Cir. 1969).

B. RECIPROCAL DISCOVERY

The Government has and will continue to fully comply with its discovery obligations. On January 23, 2008, the Government produced 32 pages of discovery and a DVD to Defendant's original attorney, Candis L. Mithcell, including the reports from the Border Patrol Agents, summaries of the statements made by Defendant, documentation regarding Defendant's criminal history and conviction documents. On February 25, 2008, the Government produced additional documentation to Defendant's current attorney, Christian De Olivas, regarding Defendant's criminal convictions. The Government moves the Court to order Defendant to provide all reciprocal discovery to which the United States is entitled under Rules 16(b) and 26.2. Rule 16(b)(2) requires Defendant to disclose to the United States all exhibits and documents which Defendant "intends to introduce as evidence in chief at the trial" and a written summary of the names, anticipated testimony, and bases for opinions of experts the defendant intends to call at trial under Rules 702, 703, and 705 of the Federal Rules of Evidence.

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III

CONCLUSION

For the foregoing reasons, the Government requests that the Court grant the Government's motion for reciprocal discovery and compelling the Defendant to provide a fingerprint exemplar.

DATED: March 13, 2008.

Respectfully submitted,

KAREN P. HEWITT
United States Attorney

/s/Rebecca Kanter
REBECCA S. KANTER
Assistant United States Attorney
Attorneys for Plaintiff
United States of America

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,) Criminal Case No. 08cr0415-LAB
)
Plaintiff,)
) CERTIFICATE OF SERVICE
v.)
)
ISIDRO DIAZ-SANTACRUZ,)
)
Defendant.)
_____)

IT IS HEREBY CERTIFIED THAT:

I, REBECCA S. KANTER, am a citizen of the United States and am at least eighteen years of age. My business address is 880 Front Street, Room 6293, San Diego, California 92101-8893.

I am not a party to the above-entitled action. I have caused service of **MOTION FOR FINGERPRINT EXEMPLARS AND RECIPROCAL DISCOVERY** on the following parties by electronically filing the foregoing with the Clerk of the District Court using its ECF System, which electronically notifies them.

Christian De Olivas

I hereby certify that I have caused to be mailed the foregoing, by the United States Postal Service, to the following non-ECF participants on this case:

None

the last known address, at which place there is delivery service of mail from the United States Postal Service.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on March 13, 2008.

/s/ Rebecca Kanter
REBECCA S. KANTER